

we can say that our involvement in Iraq has been a success, there must be a political accommodation. That political accommodation, in many ways, is more complicated than the military situation. We need people who now distrust each other, people who have attacked each other over the decades, to now come together politically and to work out a new constitution which will protect the rights of minorities in Iraq.

We have a major group in Iraq, the Shi'a, who feel, and properly so, that a small minority of Sunni Baathists, particularly in the leadership of the Baathist political movement, attacked the Shi'as with gas and with other means. These are Iraqis who were destroyed by Iraqis, by Saddam Hussein and the henchmen who were around Saddam Hussein. So the Shi'a community needs to accommodate themselves to a significant protection for a Sunni minority, and that Sunni minority must get used to the fact, the reality, the Shi'as are the majority of Iraqis, and they have elected a majority of members who are going to be present in the Iraqi Assembly. Of course, there is the yearning of the Kurds for significant autonomy. All that needs to be put together.

It is a very complicated equation for that to happen. As we hopefully achieve some success on the security side, we must keep a very wary eye open as to what is happening or not happening on the political side of the challenge in Iraq.

The constitution will be written by a commission which will be selected by an assembly which is now in place. That assembly will have its Prime Minister within the next few days and will then be able to select a constitutional commission which will write a constitution. That commission needs to reflect the Iraqi people, not the make-up of the assembly which has much too small a percentage of Sunnis, given the fact they did not vote. But the Shi'a majority needs to be wise enough, in selecting the commission that will write the constitution, to have a broadly representative commission that will write a constitution that is protective of the minorities in Iraq, that will guarantee majority rights, of course, but that in any decent nation will protect the minority as well.

That is the challenge they face. They are supposed to meet that challenge by August. They will not do that, obviously. They have a 6-month extension beyond that where they must write a constitution. Getting that constitution written is a major challenge, and anything we can do to facilitate that, it seems to me, would be very wise, indeed.

We have two challenges, one of which is addressed in the amendment before us relative to Iraqi security and the progress they are hopefully making, to give us the information that is important for a judgment to which the American people, the Congress, and our uniformed military are entitled from

this administration. I hope this has broad support and the Senate adopts the Durbin amendment.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 387

Mr. ALLEN. Mr. President, I rise today to speak in support of an amendment that my good friend from Maryland, Senator MIKULSKI, and I and a number of other Senators have offered and which does have bipartisan support. It has to do with the H-2B visa program.

Small businesses all over our Nation count on the H-2B visa program to keep their businesses operating. Many use this program year after year because it is the only way they can legally hire temporary or seasonal positions when no American workers are available. These companies hire all the American workers they can find, and they do look for American workers. But if they cannot find them, they need to get additional seasonal help, they need to find workers to meet the demands of their businesses and, indeed, to stay in business. These businesses are in construction, seafood, yard services, tourism and other season enterprises.

Congress has capped the H-2B visa program at 66,000 visas per year. That has not been adjusted since this visa category was initially capped in 1990. So since 1990 the visa cap has been 66,000. However, during those years, and here we are 15 years later, there are a variety of factors that have hampered U.S. employers from having the ability to find and hire more willing American workers for short-term positions. The shortages occur for a variety of reasons. It is actually getting much worse because Americans are unwilling to engage in low-skilled, semi-skilled short-term employment. In most instances, Americans are unwilling to relocate to a new location for several months out of a year, a move that many of these short-term jobs require. That is logical. People aren't going to want to move for 3 or 4 months and then move back to another place.

According to the Department of Homeland Security, the H-2B cap of 66,000 was reached a few months into the fiscal year. This is the second year in a row the cap has been reached this early. You may wonder why we are reaching the cap at such an early stage. What is the problem? Under current law employers cannot file an H-2B application until 120 days before they need the employee. Therefore, the H-2B program puts businesses whose peaks are in the summer and in the autumn at a disadvantage because the Citizenship and Immigration Services cannot process their applications until at least January or February, since these jobs generally start around Memorial Day. Therefore, if the cap is reached in January and February, as it was in the last several years, these employers who

rely on seasonal workers are clearly put at a disadvantage.

I have heard from these employers. One of our most important jobs that I have as a Senator is to listen to people out there in the real world, to see what are the effects of certain laws and see if there are ways to allow those in the free enterprise system, particularly small businesses, to continue to operate. I do listen to my constituents. My constituents have clearly voiced their concerns about the H-2B program and have asked for help. I think it is important that we respond.

I will give some examples of what is going on. There is a company called WEMOW. WEMOW is a landscaping design and lawn maintenance company in Blacksburg, VA. This company relies heavily on the H-2B program, and sadly they have had to cut back on services they can provide because of the lack of a workforce to meet that demand. Christopher Via, who is the president of WEMOW, wrote me. I will quote from his letter. He said:

While my company spends considerable time and money to recruit U.S. workers, the positions we need to fill are hot, labor intensive, physically exhausting low- and semi-skilled jobs that many Americans do not want to fill. Therefore, our ability to meet seasonal demand and stay in business relies on finding temporary workers. H-2B workers have proven critical in filling this need.

Of course, they are late in the season, so therefore they do not get the workers they could to meet those needs.

Another letter I received is from a company in Yorktown. Yorktown is a very famous tourism area. Stephen C. Barrs, the president of C.A. Barrs Contractor, Inc., wrote:

While our company recruits U.S. workers, our company and our industry as a whole have been unable to find American workers. We have presented evidence to the Department of Labor that there are no U.S. workers available to fill our vacant positions. Our company employs approximately 100 people, and we specialize in road construction. The H-2B program provides foreign employees who have proven tremendous employees. We have relied on the H-2B program for 6 years and find this program invaluable. Once our season ends, our H-2B workers return home. This is more a small business issue than an immigration issue. We fear this program is in jeopardy, and if it is cut in any way, our small businesses will sustain a very damaging loss.

These are two of hundreds of letters I have received from small businesses all across Virginia, asking for our immediate help. Our amendment does that. It provides an immediate legislative remedy that helps these businesses get part-time seasonal workers.

Before I get into the details of what this amendment does, I want to clearly outline what this amendment does not do. I first want to stress that this amendment in no way changes the existing requirements for applying for an H-2B visa. U.S. employers must demonstrate to State and Federal departments of labor that there are no available U.S. workers to fill vacant seasonal positions. Subsequently, they